IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28120 of 2007(V)

AGAINST THE ORDER IN IA.334/2005 IN OS.926/1998 of ADDL.MUNSIFF COURT, KANNUR
.....

PETITIONERS:
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1. **THAYYATH PATHUMMA KUTTY, W/O. LATE P.V.MAHAMOOD, AGED 84 YEARS, RESIDING AT THAYATH HOUSE, BENGALI MOHALLA, KANNUR-3.**

2. **SUHARABI, D/O. PATHUMMAKUTTY, RESIDING AT THAYATH HOUSE, BENGALI MOHALLA, KANNUR-3.**

3. **SAFIYATH, D/O. PATHUMMAKUTTY, RESIDING AT THAYATH HOUSE, BENGALI MOHALLA, KANNUR-3.**

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

RESPONDENTS:
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1. **THAYATH MUSTHAFA, S/O. LATE MAHAMOOD, THAYATH HOUSE, NEAR BENGALI MOHALLA, KANNUR-3.**

2. **PONMANICHI VALIYAGATH KADEEJA (DIED), D/O. KUNHEEMAKUTTY, RESIDING AT KALASI STREET, NEAR GOVT. HOSPITAL, KANNUR-17. (DIED)**

3. **SULAIKHA, RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION, P.O.ALAVIL, KANNUR-8.**

4. **PONMAHINICHI VALIYAGATH ASMA, RESIDING AT KALASI STREET, NEAR HQ HOSPITAL, KANNUR-17.**

5. **ABDUL AZEEZ, RESIDING AT KALASI STREET, NEAR HQ HOSPITAL, KANNUR-17.**

6. SAKEENA,
RESIDING AT PALLIKUNNU AMSOM, CHALAD DESOM,
NEAR PADANNA PALAM, KANNUR-14.

7. AYISHABI,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

8. BEEBU,
RESIDING AT PALLIKUNNU AMSOM, CHALAD DESOM,
NEAR MANAL, KANNUR-14.

9. SAINABI,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

10. PONMANICHI VALIYAGATH ABDUL JABBAR,
RESIDING AT NEAR KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

11. HASHIM,
RESIDING AT NEAR KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

12. P.V.SABIRA, D/O. ASMA,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

13. P.V.THAHIR, S/O. LATE FOUZIYA (MINOR),
REPRESENTED BY HIS GUARDIAN AND GRANT MOTHER
P.V.ASMA, KALASI STREET, HQ HOSPITAL, KANNUR-17.

14. P.V.THAHIRA, D/O. SAKEENA,
RESIDING AT PALLIKUNNU AMSOM, CHALAD DESOM,
KANNUR-14.

15. P.V.MUMTAZ,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

16. SAFIYATH,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

17. HAZEENA, (MINOR), REPRESENTED BY
HER GUARDIAN AND MOTHER MUMTAZ,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

18. RUBEENA (MINOR), REPRESENTED BY
HER GUARDIAN, AND MOTHER SAFIYATH, KALASI STREET,
NEAR HQ HOSPITAL, KANNUR-17.

19. ZUBAIDA,
RESIDING AT NEAR PADANNAPALAM, CHALAD,
KANNUR-14.

20. MAHROOF,
RESIDING AT NEAR PADANNAPALAM, CHALAD, KANNUR-14.

21. SUMAYYA,
RESIDING AT NEAR PADANNAPALAM, KANNUR-14.

22. ANEEZA, (MINOR), REPRESENTED BY
HER GUARDIAN AND MOTHER SAINABI, RESIDING AT
KALASI STREET, NEAR HQ HOSPITAL, KANNUR-17.

23. ASHIQUE (MINOR), REPRESENTED BY
HIS GUARDIAN AND MOTHER SAINABI, -DO- -DO-

24. ASKAR (MINOR), REPRESENTED BY HER
GUARDIAN AND MOTHER SAINABI, RESIDING AT -DO- -DO-

25. ANEES (MINOR), REPRESENTED BY
HER GUARDIAN AND MOTHER SAINABI,
RESIDING AT -DO- -DO-

26. P.V.HAFSATH, D/O. NAFEESA,
NEAR CHIRAKKAL KULAM, KANNUR-3.

27. P.V.SHARAFUDDIN,
RESIDING NEAR CHIRAKKAL KULAM, KANNUR-13.

28. SAMEERA,
RESIDING AT NEAR CHIRAKKAL KULAM, KANNUR-13.

29. NASEERA (MINOR), REPRESENTED BY
HER GUARDIAN AND MOTHER P.V.HAFSATH,
NEAR CHIRAKKAL KULAM, KANNUR-13.

30. P.V.JAMEELA,
RESIDING AT RAHMATH MANZIL, ALAVIL JUNCTION,
P.O.ALAVIL, KANNUR-8.

31. P.V.SAREENA,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
P.O.ALAVIL, KANNUR-8.

32. P.V.ASHRAF,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
P.O.ALAVIL, KANNUR-8.

33. NASEEMA P.V., RESIDING AT
RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
P.O.ALAVIL, KANNUR-8.

34. P.V.RAFEEQUE,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
P.O.ALAVIL, KANNUR-8.

35. P.V.THAJUNNISSA,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
P.O.ALAVIL, KANNUR-8.

36. P.V.SUHARA,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
KANNUR-8.

37. P.V.SADIQUE,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
KANNUR-8.

38. P.V.SAFOORA,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
KANNUR-8.

39. THASLEEMA (MINOR), REPRESENTED BY
HER GUARDIAN AND MOTHER P.V.SUHARA,
RAHMATH MANZIL, NEAR ALAVIL JUNCTION, KANNUR-8.

40. P.V.HARSHAD (MINOR), REPRESENTED BY
HIS GUARDIAN AND MOTHER P.V.SAREENA, RESIDING AT
RAHMATH MANZIL, NEAR ALAVIL JUNCTION, KANNUR-8.

41. P.V.HASFAR, (MINOR), REPRESENTED BY
HIS GUARDIAN AND MOTHER P.V.SAREENA,
-DO- -DO-

42. P.V.HAFSEENA (MINOR), REPRESENTED BY
HIS GUARDIAN AND MOTHER P.V.SAREENA,
-DO- -DO-

43. P.V.AFTAB (MINOR), REPRESENTED BY
HIS GUARDIAN AND MOTHER NASEEMA P.V.,
RESIDING AT RAHMATH MANZIL, NEAR ALAVIL JUNCTION,
P.O.ALAVIL, KANNUR-8.

44. P.V.RISHANA, (MINOR), REPRESENTED BY
HER GUARDIAN & MOTHER NASEEMA P.V.,
-DO- -DO-

45. P.V.RUVASEETHA, (MINOR), REPRESENTED BY
HER GUARDIAN & MOTHER NASEEMA P.V., -DO- -DO-

46. P.V.JUNAIDA (MINOR), REPRESENTED BY
HER GUARDIAN & MOTHER NASEEMA P.V., -DO- -DO-

47. P.V.SARJAN, (MINOR),
REPRESENTED BY HIS GUARDIAN & MOTHER NASEEMA P.V.,
-DO- -DO-

48. P.V.JAFARUDDIN (MINOR),
REPRESENTED BY HER MOTHER & GUARDIAN,
NASEEMA P.V., -DO- -DO-

49. PONMANICHI VALIYAKATH MOHAMMED ALI,
RESIDING NEAR RAGHAM TALKIES,
MARAKKARKANDY, KANNUR-3.

50. P.V.MUBEENA (MINOR), REPRESENTED BY
GUARDIAN & MOTHER AYISHABI, RESIDING AT
KALASI STREET, NEAR HQ HOSPITAL, KANNUR-17.

51. P.V.BADSHA, (MINOR), REPRESENTED BY
HER GUARDIAN AND MOTHER SAKEENA, RESIDING AT
PALLIKUNNU AMSOM, CHALAD DESOM, NEAR PADANNAPALAM,
KANNUR-14.

52. P.V.AFSEENA (MINOR), REPRESENTED BY
HER MOTHER AND GUARDIAN SAINABI, RESIDING AT
KALASI STREET, NEAR HQ HOSPITAL, KANNUR-17.

53. P.V.HASANATH, D/O. P.V.SABIRA,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

54. P.V.HAFSAL (MINOR), REPRESENTED BY
HIS MOTHER & GUARDIAN P.V.SABIRA,
RESIDING AT KALASI STREET, NEAR HQ HOSPITAL,
KANNUR-17.

55. P.V.THAHIRA, (MINOR),
REPRESENTED BY HER MOTHER & GUARDIAN,
P.V.SABIRA, -DO- -DO-

56. P.V.THASNI, (MINOR), REPRESENTED BY
HER MOTHER & GUARDIAN, P.V.SABIRA, -DO- -DO-

57. P.V.NIYAS, S/O. P.V.THAHIRA,
RESIDING AT PALLIKUNNU AMSOM, CHALAD DESOM,
KANNUR.

58. P.V.ZAZNI,
RESIDING AT PALLIKUNNU AMSOM, CHALAD DESOM,
KANNUR.

59. P.V.NAZEEYA (MINOR), REPRESENTED BY
HER MOTHER & GUARDIAN, P.V.THAHIRA,
RESIDING AT PALLIKUNNU AMSOM, CHALAD DESOM.

60. P.V.NIHAL, (MINOR),
REPRESENTED BY HIS MOTHER & GUARDIAN,
P.V.THAHIRA, -DO- -DO-

61. ZEYADH (MINOR), REPRESENTED BY
HIS GUARDIAN ZUBAIDA, RESIDING AT
PADANNAPALAM, CHALAD, KANNUR-14.

62. P.V.SAFIYA,
RESIDING AT SAFIYABAD, NEAR OLD VETHILAPALLI,
THAYYIL, KANNUR-3.

63. P.V.KHADEEJA, D/O. HASSAN KOYA,
RESIDING AT SAFIYABAD, NEAR OLD VETHILAPPALLI,
THAYYIL, KANNUR-3.

64. P.V.FAROOQUE,
RESIDING AT SAFIYABAD, NEAR OLD VETHILAPPALLI,
THAYYIL, KANNUR-3.

65. P.V.RAUF,
RESIDING AT SAFIYABAD, NEAR OLD VETHILAPPALLI,
THAYYIL, KANNUR-3.

66. P.V.NASAR,
RESIDING AT SAFIYABAD, -DO- -DO-

67. P.V.ASEENA,
RESIDING AT SAFIYABAD, -DO- -DO-

68. P.V.RAZIYA,
RESIDING AT SAFIYABAD, -DO- -DO-

69. P.V.ASMA, W/O. ABOONHI,
RESIDING AT VALIYAKATH HOUSE, BENGALI MOHALLA,
KANNUR CITY, KANNUR-3.

70. P.V.ASHRAF,
RESIDING AT VALIYAKATH HOUSE, -DO- -DO-

71. P.V.SIDIQUE,
RESIDING AT VALIYAKATH HOUSE, -DO- -DO-

72. P.V.WAHEEDA,
RESIDING AT VALIYAKATH HOUSE, -DO- -DO-

73. P.V.JUNAIDA (MINOR), REPRESENTED BY
HER GUARDIAN AND MOTHER P.V.ASMA,
RESIDING AT VALIYAKATH HOUSE, BENGALI MOHALLA,
KANNUR CITY, KANNUR-3.

74. P.V.RUBAIDA, (MINOR),
REPRESENTED BY HER GUARDIAN AND MOTHER
P.V.ASMA, -DO- -DO-

75. P.V.SULAIKHA, W/O. SATHAR HAJI,
RESIDING AT SULAIKHA MANZIL, CHALAD, KANNUR-14.

76. P.V.SUMARA, W/O. FAIZAL,
RESIDING AT SULAIKHA MANZIL, CHALAD, KANNUR-14.

77. P.V.IJAS, S/O. SATHAR HAJI,
RESIDING AT SULAIKHA MANZIL, CHALAD, KANNUR-14.

78. P.V.MUNAVAR, S/O. SATHAR HAJI,
RESIDING AT SULAIKHA MANZIL, CHALAD, KANNUR-14.

79. P.V.MUTHASSIR, S/O. SATHAR HAJI,
-DO- -DO-

80. P.V.SHABEER, S/O. SATHAR HAJI,
-DO- -DO-

81. P.V.MUBEENA, D/O. SATHAR HAJI,
-DO- -DO-

82. P.V.SUNAIRA, (MINOR),
REPRESENTED BY HER MOTHER & GUARDIAN P.V.SULAIKHA,
VALIYAKATH HOUSE, KANNUR CITY, KANNUR-3.

83. P.V.MUHAMMED FAISI, (MINOR),
REPRESENTED BY HIS MOTHER & GUARDIAN P.V.SUMARA,
RESIDING AT SULAIKHA MANZIL, CHALAD, KANNUR-14.

84. P.V.ASARUDHEEN, (MINOR), REPRESENTED BY
HIS MOTHER & GUARDIAN P.V.SUMARA, -DO- -DO-

85. P.V.AFTHAB, (MINOR), S/O. P.V.MUBEENA,
REPRESENTED BY HIS GUARDIAN AND MOTHER MUBEENA,
RESIDING AT SULAIKHA MANZIL, CHALAD, KANNUR-14.

86. P.V.JAMEELA, D/O. LATE O.ABOOBACKER,
RESIDING AT 'JAMEELAS', ARAKKAKATH VALAP,
ANDATHODE, U.C.WARD, KANNUR-3.

87. P.V.ANWAR, S/O. LATE P.ABOOBACKER,
RESIDING AT -DO- -DO-

88. P.V.THANVEER, S/O. C.H.HASHIM,
RESIDING AT -DO- -DO-

89. P.V.THANSEER, S/O. C.H.HASHIM,
RESIDING -DO- -DO-

90. P.V.THASNI (MINOR), D/O. C.H.HASHIM,
REPRESENTED BY HER GUARDIAN C.H.HASHIM,
RESIDING AT -DO- -DO-

91. P.V.THAYYASI, D/O. C.H.HASHIM,
REPRESENTED BY HER GUARDIAN HASHIM,
RESIDING AT -DO- -DO-

92. P.V.SUBAIDA, D/O. LATE O.ABOOBACKER,
RESIDING AT 'JAMEELA'S, ARAKKALATH VALAP,
ANDATHODE, U.C.WARD, KANNUR-3.

93. P.V.MUHAMMED SALI, S/O. LATE C.C.MAMU,
SALI VILLA, MARAKKARKANDY, KANNUR-3.

94. P.V.PATHUMMAKUTTY, W/O. LATE MAMMOTTY,
RESIDING AT ASMABI QUARTERS, NHALUVAYAL,
KANNUR-3.

95. P.V.MUHAMMED RAFEEQUE,
RESIDING AT ASMABI QUARTERS, NHALUVAYAL,
KANNUR-3.

96. P.V.NOORBI,
RESIDING AT ASAMBIL QUARTERS, NHALUVAYAL,
KANNUR-3.

97. P.V.NASEEMA,
RESIDING AT ASMABI QUARTERS, NHALUVAYAL,
KANNUR-3.

98. P.V.THASNI,
RESIDING AT ASMABI QUARTERS, NHALUVAYAL,
KANNUR-3.

99. P.V.THANSEERA, (MINOR), REPRESENTED BY
GUARDIAN & MOTHER P.V.NOORBI, RESIDING AT
ASMABI QUARTERS, NHALUVAYAL, KANNUR-3.

100. P.V.MUSTAFA,
RESIDING AT 'SAMMERABAD', PADANNA WARD,
P.O.THAYYIL, KANNUR-3.

101. P.V.ABDUL MAJEED,
-DO- -DO-

102. P.V.MUHAMMED KUNHI,
RESIDING AT 'SAMMERABAD', PADANNA WARD,
P.O.THAYYIL, KANNUR-3.

103. P.V.RAMLATH,
RESIDING AT "MEETHAL HOUSE", ANCHAM MILE MELE,
KADIROOR P.O., THALASSERY.

104. P.V.SHAHANAZ,
RESIDING AT "MEETHAL HOUSE", -DO- -DO-

105. P.V.THASNEEM,
-DO- -DO-

106. P.V.SHAHEER,
-DO- -DO-

107. P.V.SHAMINA,
-DO- -DO-

108. P.V.SHINAS (MINOR), REPRESENTED BY
MOTHER & GUARDIAN, P.V.RAMLATH.

109. P.V.MUHAMMED NAFIH (MINOR),
REPRESENTED BY MOTHER & GUARDIAN, P.V.THASNEEM,
RESIDING AT "MEETHAL HOUSE", ANCHAM MILE MELE,
KADIROOR P.O., THALASSERY.

110. P.V.SAINABI,
RESIDING AT PONMANAICHI VALIYAKATH HOUSE,
BENGALI MOHALLA, KANNUR-3.

111. P.V.SARAFUDDIN,
RESIDING AT PONMANICHI VALIYAKATH HOUSE,
BENGALI MOHALLA, KANNUR-3.

112. MUNEERABHANU P.V.,
RESIDING AT 'JAMUNA', H.NO.A.D.293,
KAZANAKOTTA, KANNUR-12.

113. NASEEMA P.V.,
RESIDING AT -DO- -DO-

114. SHAMEEMA P.V.,
RESIDING AT -DO- -DO-

115. THASNEEM P.V.,
RESIDING AT -DO- -DO-

116. BALKIES P.V.,
-DO- -DO-

117. SHAHANAZ P.V.,
RESIDING AT -DO- -DO-

118. P.V.SADIQUE, (MINOR),
REPRESENTED BY MOTHER & GUARDIAN, NASEEMA P.V.,
RESIDING AT "JAMUNA", H.NO.A.D.293, KAZANAKOTTA,
KANNUR-12.

119. P.V.SHERIYYA, (MINOR), REPRESENTED BY
MOTHER & GUARDIAN, NASEEMA P.V.,
RESIDING AT -DO- -DO-

120. P.V.SHAHALA, (MINOR),
REPRESENTED BY MOTHER & GUARDIAN NASEEMA P.V.,
RESIDING AT -DO- -DO-

121. P.V.AKKINASH, (MINOR), REPRESENTED BY
MOTHER & GUARDIAN, SHAMEEMA P.V.,
RESIDING AT -DO- -DO-

122. P.V.SHUMAIS, (MINOR), REPRESENTED BY
MOTHER & GUARDIAN, THASNEEM P.V.,
RESIDING AT -DO- -DO-

123. P.V.SHAMAS, REPRESENTED BY
MOTHER & GUARDIAN, THASNEEM P.V.,
RESIDING AT -DO- -DO-

124. P.V.FATHIMA, (MINOR),
REPRESENTED BY MOTHER & GUARDIAN, THASNEEM P.V.,
RESIDING AT -DO- -DO-

125. P.V.RADFAN, (MINOR), REPRESENTED BY
MOTHER & GUARDIAN, BALKIES P.V.,
RESIDING AT -DO- -DO-

126. P.V.JANISHA, (MINOR), REPRESENTED BY MOTHER & GUARDIAN, SHAHANAS P.V., RESIDING AT -DO- -DO-

127. P.V.MARIYUMMAKUTTY, W/O. LATE T.M.ABOOBACKER, RESIDING AT 'FURAS', NEAR AVERAPPALAM, ANDATHODE, KANNUR-6.

128. P.V.NAVAS, RESIDING AT 'FURAS', NEAR AVERAPPALAM, ANDATHODE, KANNUR-6.

129. P.V.SAINUL ABIDEEN, RESIDING AT -DO- -DO-

130. P.V.SAKKALOOL, RESIDING AT -DO- -DO-

131. P.V.ZAREENABANU, RESIDING AT P.V.HOUSE, K.T.29/3, KOTTAKKAYIL, KANNUR-3.

132. P.V.MUHAMMED KALEEL, RESIDING AT -DO- -DO-

133. P.V.MUHAMMED AMEEN, RESIDING AT -DO- -DO-

134. P.V.MUHAMMED RASHID, RESIDING AT -DO- -DO-

135. P.V.THAMEEMABANU, RESIDING AT -DO- -DO-

136. P.V.MUHAMMED SHAHID, RESIDING AT -DO- -DO-

137. P.V.MUHAMMED JAVID, RESIDING AT -DO- -DO-

138. P.V.THAIRABANU, RESIDING AT -DO- -DO-

139. P.V.BINDU, RESIDING AT -DO- -DO-

140. P.V.MISHAL, (MINOR), REPRESENTED BY MOTHER & GUARDIAN P.V.BINDU, RESIDING AT P.V.HOUSE, K.T.29/3, KOTTAKAYIL, KANNUR-3.

141. P.V.ISNA, (MINOR), REPRESENTED BY MOTHER & GUARDIAN P.V.BINDU, -DO- -DO-

142. P.V.JASMINE, D/O. T.P.NASAR, RESIDING AT P.V.HOUSE, KT 29/3, KOTTAKAYIL, KANNUR-3.

**143. P.V.JANIS, (MINOR), REPRESENTED BY
HER GUARDIAN T.P.NASAR, RESIDING AT P.V.HOUSE,
K.T. 29/3, KOTTAKAYIL, KANNUR-3.**

**144. P.V.RASIYA IQBAL,
RESIDING AT 'RISHAN', NEAR SANGEETHA TALKIES,
PAYYAMBALAM, KANNUR-1.**

**145. P.K.SITHARA,
RESIDING AT 'RISHAN', NEAR SANGEETHA TALKIES,
PAYYAMBALAM, KANNUR-1.**

**146. P.K.SHIFAZ,
RESIDING AT 'RISHAN', NEAR SANGEETHA TALKIES,
PAYYAMBALAM, KANNUR-1.**

**147. P.K.SHAJAHAN, (MINOR),
REPRESENTED BY HIS GUARDIAN AND MOTHER P.V.RASIYA,
RESIDING AT 'RISHAN', NEAR SANGEETHA TALKIES,
PAYYAMBALAM, KANNUR-1.**

**148. P.K.NEHA, (MINOR), REPRESENTED BY
GUARDIAN AND MOTHER P.K.SITHARA,
RESIDING AT 'RISHAN', NEAR SANGEETHA TALKIES,
PAYYAMBALAM, KANNUR-1.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 28120 OF 2007

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Dated this the 25th day of September, 2007.

J U D G M E N T

This writ petition is filed challenging the order in I.A.3417/06 in I.A.334/05 in O.S.926/98 of the Addl. Munsiff Court, Kannur. The said application is filed for amending the plaint and decree by virtue of the contention raised by the respondents 110 and 111, i.e., defendants 110 and 111 in the suit. There was a dispute regarding the correct extent of the property. Defendants 110 and 111 contended for the position that the total extent of the property was 49 cents out of which some portion had been acquired for the pathway and only 40 cents remain available for partition. They also contend that the house is situated in the adjacent land comprised in Sy.No.265 and it is not part and parcel of the plaint schedule property which is comprised in Sy.No.266. Unfortunately, the Court instead of considering the matter in the preliminary decree stage itself regarding the actual extent available for division, relegated the matter to be

decided by the Court after inspection by the Commissioner in the final decree proceedings. Therefore, the question of correct extent available for partition has been deferred by the preliminary decree Court to be decided in the final decree proceedings. Now, what the plaintiff wants is to amend the plaint and decree whereby the extent of one acre is sought to be incorporated. I may state that the Court below was not incorrect in rejecting the application for amendment of the plaint and decree because it was a matter left open to be decided by the Court in the final decree proceedings. But the observation contained in the order regarding the actual extent shall not be a binding force on the very same Court for the reason that the Court is expected to consider it independently in the final decree proceedings. It is a well settled principle that identity of the property and the availability of the property are all decided not by mere Sy.No. alone or by the extent alone and when there is discrepancy between the Sy.No. and measurement etc. the boundaries will prevail and this Court had also held that the

Court should adopt a method which will be having a least error in deciding the issue. So, bearing these principles in mind, I direct the Court below to consider the question independently and decide what is the extent available for division after hearing all concerned and allowing the parties to adduce evidence and produce documents in support of their respective contentions.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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